

AMENDED IN ASSEMBLY APRIL 23, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2743

Introduced by Assembly Member Saldana

February 22, 2008

An act to add Section 11362.84 to the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 2743, as amended, Saldana. Medical marijuana: nonassistance with federal raids.

Existing law creates a legal defense for a patient and a patient's primary caregiver against criminal charges of possession or cultivation of marijuana, as specified. Existing law also establishes a medical marijuana program, which exempts persons with an identification card and the person's designated primary caregiver from arrest for possession, transportation, delivery, or cultivation of medical marijuana, as specified.

This bill would declare that it is the policy of the state that its agencies and agents *and its cities, counties, and other state or local* shall not ~~cooperate~~ assist in federal raids, *arrests, investigations*, or prosecutions for marijuana-related offenses if the target is a qualified patient, a designated caregiver, or other person covered under state medical marijuana laws, ~~as specified~~. *The bill would also declare that it is not the policy of the state to prohibit assistance in specified circumstances in which (1) the target is engaged in marijuana distribution to individuals who are not protected by medical marijuana laws, (2) the investigation relates solely to marijuana grown or stored without permission on federal, state, or local lands, or (3) a law enforcement*

agency is required to provide crowd or traffic control outside a location where federal agents are conducting a raid, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) California voters enacted and overwhelmingly support laws
3 to decriminalize under state law the medical use, possession, and
4 distribution of marijuana to qualified patients.

5 (b) Federal criminal law permits under the federal compassionate
6 use program the use of marijuana by patients remaining in that
7 program, but does not provide any exception whatsoever for the
8 doctor-recommended use of marijuana by California patients, as
9 decriminalized under California law.

10 (c) Federal agents have repeatedly raided, arrested, and
11 prosecuted marijuana providers of medical marijuana patients, and
12 arrested and seized medicine from patients.

13 (d) The proper operation of California's medical marijuana laws
14 depends on preserving patients' and providers' confidentiality and
15 conducting any necessary investigations under state law.

16 (e) The Medical Marijuana Program prohibits agents of the state
17 of California and its political subdivisions from ~~arresting, housing,~~
18 ~~or otherwise detaining~~ *arresting* any medical marijuana patient
19 who possesses a valid medical marijuana identification card.

20 (f) State and local officials sometimes mistakenly believe their
21 duties include enforcing the federal prohibition on medical
22 marijuana against patients and caregivers.

23 (g) The California Fourth Circuit Court of Appeals, in *City of*
24 *Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, 391,
25 noted that "it is not the job of the local police to enforce the federal
26 drug laws"

27 (h) Although the State of California recognizes the right of the
28 federal government to enforce its own laws, the state is not required
29 to use its resources to enforce federal law.

30 SEC. 2. Section 11362.84 is added to the Health and Safety
31 Code, to read:

32 11362.84. (a) It is the policy of the state that its agencies and
33 agents *and its cities, counties, and other state or local*

1 ~~governmental entities shall not cooperate in federal raids~~ *assist in*
2 *federal raids, arrests, investigations, or prosecutions for*
3 *marijuana-related offenses if the target is a qualified patient, a*
4 *designated caregiver, or other person described in Section*
5 *11362.775.*

6 *(b) It is not the policy of the state to prohibit assistance if any*
7 *of the following circumstances exist:*

8 *(1) There is probable cause to believe the target of the*
9 *investigation is engaged in the ongoing, knowing, and willful*
10 *distribution of marijuana to individuals who are not protected by*
11 *Sections 11362.5 to 11352.83, inclusive, or another state or federal*
12 *medical marijuana law.*

13 *(2) The investigation relates solely to marijuana that is grown*
14 *or stored on federal, state, or local lands, without the permission*
15 *of any state or local government.*

16 *(3) A law enforcement agency is require to provide crowd or*
17 *traffic control outside a location where federal agents are raiding*
18 *a qualified patient, a designated caregiver, or other person*
19 *described in Section 11362.775.*

20 *(c) This section shall not allow or require a state, local, or*
21 *county agent or agency to actively impede a federal agent or*
22 *agency from carrying out federal law.*